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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,109	03/04/2002	Rosa Maria Perez Gomariz	G80-016 CIP	5154

21706 7590 10/27/2004
NOTARO AND MICHALOS
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ORANGEBURG, NY 10962-2100

EXAMINER

LU, FRANK WEI MIN

ART UNIT	PAPER NUMBER
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1634

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/090,109

Applicant(s)

PEREZ GOMARIZ ET AL.

Examiner

Frank W Lu

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1Claim(s) withdrawn from consideration: 2-6

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

ADVISORY ACTION

I. The proposed amendments filed on September 27, 2004 have been fully considered but will not be entered because: (1) they raise new issues that would require further consideration and/or search; and (2) they are not deemed to place the application in better form for appeal by material reducing or simplifying the issues for appeal.

Response to Arguments

I. In page 3, fourth paragraph of applicant's remarks, applicant indicates that current objection is a error.

After carefully considers applicant's argument, the examiner agrees to withdraw the objections in the final rejection.

II. In page 4, first paragraph bridging to page 5, last paragraph of applicant's remarks, applicant argues that "[F]ishbein fails to teach or suggest an effective pharmaceutical unit dosage formulation of vasoactive intestinal peptide/pituitaryadenylate cyclase-activating peptide receptoragonist, as recited in claim 1".

This argument has been fully considered but it is not persuasive toward the withdrawal of the rejection because applicant's arguments with respect to claim 1 are moot since applicant has amended claim 1. The proposed amendments in claim 1 raise new issues that would require further consideration and/or search. For example, the phrase "an effective pharmaceutical unit dosage formulation" in claim 1 is a new limitation and is not found in claim 1 amended on March 22, 2004.

III. In page 6, third paragraph of applicant's remarks, applicant argues that "[G]ourlet fails to teach or suggest the recited unit dosage formulation".

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This argument has been fully considered but it is not persuasive toward the withdrawal of the rejection because applicant's arguments with respect to claim 1 are moot since applicant has amended claim 1. The proposed amendments in claim 1 raise new issues that would require further consideration and/or search. For example, the phrase "an effective pharmaceutical unit dosage formulation" in claim 1 is a new limitation and is not found in claim 1 amended on March 22, 2004.

IV. In page 6, four paragraph of applicant's remarks, applicant argues that "claim 7 is patentable because it recites not only a unit dosage formulation, but also that the dosage is in milligrams per kilogram body weight".

This argument has been fully considered but it is not persuasive toward the withdrawal of the rejection because newly added claim 7 raises new issues that would require further consideration and/or search. For example, the phrases "therapeutically effective formulation having a unit dosage" and "milligrams per kilogram of body weight" in claim 7 are new limitations and are not found in claim 1 amended on March 22, 2004.

2. Since applicant does not cancel nonelected claims 2-6 in the proposed amendment and adds new claim 7, the proposed amendment are not deemed to place the application in better form for appeal by material reducing or simplifying the issues for appeal.

3. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CAR § 1.6(d)). The CM Fax Center number is (703)872-9306.

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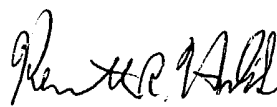
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Lu, Ph.D., whose telephone number is (571)272-0746.

The examiner can normally be reached on Monday-Friday from 9 A.M. to 5 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion, can be reached on (571)272-0782.

Any inquiry of a general nature or relating to the status of this application should be directed to the Chemical Matrix receptionist whose telephone number is (703) 308-0196.

Frank Lu
PSA
October 19, 2004


KENNETH R. HORLICK, PH.D
PRIMARY EXAMINER

10/25/04